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Lee Ee Foong v Ong Seow Lee

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HIGH COURT (GEORGETOWN) — CIVIL APPEAL NO PA-11BNCC-2–08 OF 2022
ROZANA ALI J
3 JANUARY 2025

C

Contract — Agreement — Friendly loan agreement — Repayment through cryptocurrency — Respondent's claim against appellant alleging failure to repay friendly loan sum allowed by magistrate — Whether transfer of digital asset constituted valid repayment of friendly loan sum

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This was an appeal by the appellant ('defendant') against the decision of the learned magistrate in allowing the respondent's ('plaintiff') claim against the defendant for RM70,000 and dismissing the defendant's counterclaim for RM17,134.04. This emanated from the plaintiff's initial investment with the defendant for the purchase of cryptocurrency machines, Bitcoin miner machine ('the machines'), for a sum of RM140,000. As it was a joint investment, both parties had invested a sum of RM70,000 each for the purchase of the machines. The plaintiff had paid a sum of RM70,000 to the defendant ('the sum'). The sum was then used for the purchase of five of the machines and this was within the knowledge of the plaintiff. Subsequently, the plaintiff and the defendant had agreed for the said sum to be converted to a friendly loan for the defendant. To satisfy repayment for the friendly loan, the defendant had repaid the friendly sum to the plaintiff by way of 50 units Litecoins, bearing the equivalent market value of RM87,134.04 as alleged by the defendant to the plaintiff's Binance wallet account. However, the plaintiff filed a claim against the defendant at the magistrate court alleging that the defendant had failed to satisfy the friendly loan amounting to RM70,000. The defendant on the other hand claimed that: (a) the defendant had paid the full loan by transferring 50 units of Litecoins to the plaintiff's Binance account; and (b) the plaintiff was still withholding the excess sum of RM17,134.04 which formed the basis of the defendant's counterclaim. The plaintiff's claim was allowed and the defendant's counterclaim was dismissed, and hence this appeal.

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Held, allowing the appeal:

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(1) The learned magistrate had erred in facts and law when he: (a) failed to consider that the defendant had paid the friendly loan of RM70,000 through 50 Litecoins to the plaintiff's Binance account. 50 Litecoins being the repayment of the loan was accepted without any objections by

the plaintiff; and (b) considered that the 50 Litecoins was of no value. There was no evidence advanced by the plaintiff that the 50 Litecoins did not possess a market value. The magistrate failed to take cognisance that cryptocurrency was a digital asset and was universally accepted as a form of money and therefore it bore valuable consideration. The learned magistrate also failed to consider the plaintiff's admission that she had no knowledge to manage her account and requested the defendant to teach her how to sell the Litecoins. Thus, the 50 Litecoins transferred by the defendant to the plaintiff was the full repayment of the friendly loan for the value RM70,000 and the defendant was not entitled the counterclaim of RM17,134.04 (see paras 19–20 & 23–24).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu ('defendan') terhadap keputusan majistret yang bijaksana dalam membenarkan tuntutan responden ('plaintif') terhadap defendan sebanyak RM70,000 dan menolak tuntutan balas defendan sebanyak RM17,134.04. Ini berpunca daripada pelaburan awal plaintif dengan defendan untuk pembelian mesin mata wang kripto, mesin lombong Bitcoin ('mesin'), dengan jumlah RM140,000. Oleh kerana ia adalah pelaburan bersama, kedua-dua pihak telah melabur sejumlah RM70,000 setiap seorang untuk pembelian mesin tersebut. Plaintif telah membayar sejumlah RM70,000 kepada defendan ('jumlah tersebut'). Jumlah tersebut kemudiannya digunakan untuk pembelian lima buah mesin dan ini adalah dalam pengetahuan plaintif. Kemudian, plaintif dan defendan telah bersetuju agar jumlah tersebut ditukar menjadi pinjaman persahabatan untuk defendan. Untuk memenuhi pembayaran balik pinjaman persahabatan tersebut, defendan telah membayar balik jumlah persahabatan itu kepada plaintif melalui 50 unit Litecoin, yang mempunyai nilai pasaran setara RM87,134.04 seperti yang didakwa oleh defendan ke akaun dompet Binance plaintif. Walau bagaimanapun, plaintif telah memfailkan tuntutan terhadap defendan di mahkamah majistret dengan mendakwa bahawa defendan telah gagal untuk memenuhi pinjaman persahabatan berjumlah RM70,000. Defendan pula mendakwa bahawa: (a) defendan telah membayar balik pinjaman penuh dengan memindahkan 50 unit Litecoin ke akaun Binance plaintiff; dan (b) plaintiff masih menahan jumlah lebihan sebanyak RM17,134.04 yang menjadi asas kepada tuntutan balas defendan. Tuntutan plaintif telah dibenarkan dan tuntutan balas defendan telah ditolak, dan oleh itu rayuan ini.

Diputuskan, membenarkan rayuan:

(1) Majistret yang bijaksana telah terkhilaf dari segi fakta dan undang-undang apabila beliau: (a) gagal mempertimbangkan bahawa defendan telah membayar pinjaman persahabatan sebanyak RM70,000 melalui 50 Litecoin ke akaun Binance plaintif. 50 Litecoin itu sebagai pembayaran balik pinjaman telah diterima tanpa sebarang bantahan oleh

plaintif; dan (b) mempertimbangkan bahawa 50 Litecoin itu tidak bernilai. Tiada bukti yang dikemukakan oleh plaintif bahawa 50 Litecoin itu tidak mempunyai nilai pasaran. Majistret gagal mengambil maklum bahawa mata wang kripto ialah aset digital dan diterima secara universal sebagai satu bentuk wang dan oleh itu mempunyai pertimbangan bernilai. Majistret yang bijaksana juga gagal mempertimbangkan pengakuan plaintif bahawa dia tidak mempunyai pengetahuan untuk menguruskan akaunnya dan meminta defendan untuk mengajarnya cara menjual Litecoin tersebut. Oleh itu, 50 Litecoin yang dipindahkan oleh defendan kepada plaintif adalah pembayaran balik penuh pinjaman persahabatan untuk nilai RM70,000 dan defendan tidak berhak mendapat tuntutan balas sebanyak RM17,134.04 (lihat perenggan 19–20 & 23–24).]

Cases referred to

Lee Kuang Gen v Tan Sri Dato' Seri Dr M Mahadevan a/l Mahalingam and other appeals [2024] 1 MLJ 825, CA (refd)

Pernec Corp Bhd v A & AT Advanced Power Systems Sdn Bhd [2013] 4 MLJ 719, CA (folld)

Robert Ong Thien Cheng v Luno Pte Ltd & Anor [2019] 1 LNS 2194, HC (refd)

Appeal from: Civil Appeal No PA-A72NCC-165–06 of 2021 (Magistrate Court, Georgetown)

Joshua Kevin (with Leng Wie Mun and Reuben Ong) (Kevin & Co) for the appellants.

Sharla Shangkeri a/p Loganathan (with Eng Khin Hock) (Stephen & Co) for the respondent.

Rozana Ali J:

INTRODUCTION

[1] This is an appeal by the appellant/defendant against the decision of the learned magistrate which was delivered on 26 July 2022 where the magistrate has allowed the respondent/plaintiff's claim against the appellant/defendant for RM70,000 and dismissed the appellant/defendant's counterclaim for RM17,134.04.

[2] The parties in this appeal will be referred to as plaintiff and defendant as they were known in the magistrate court.

A BACKGROUND OF THE CASE

[3] The appeal herein emanates from the plaintiff's initial investment with the defendant for the purchase of cryptocurrency machines, Bitcoin Miner Machine ('the machines'), for a sum of RM140,000. As it was a joint investment, both parties had invested a sum of RM70,000 each for the purchase of the machines.

[4] On 4 December 2017, the plaintiff had paid a sum of RM70,000 to the defendant by way of Public Bank Cheque No 549930 ('the said sum'). The said sum was then used for the purchase of five of the machines and this was within the knowledge of the plaintiff. On or around early 2018, the plaintiff and the defendant had agreed for the said sum to be converted to a friendly loan for the defendant.

[5] On or around 16 March 2020, to satisfy repayment for the friendly loan, the defendant had repaid the friendly sum to the plaintiff by way of 50 units Litecoins, bearing the equivalent market value of RM87,134.04 as alleged by the defendant to the plaintiff's Binance Wallet Account No: LMc5QriTS3vUsutzenMajV8gTbGV777JQ.

[6] However, the plaintiff in the magistrate case has filed claim against the respondent, alleging that the respondent has failed to satisfy the friendly loan amounting to RM70,000. The defendant on the other hand claimed that the defendant has paid the full loan by transferring 50 units of Litecoins to the plaintiff's Binance account. In fact, plaintiff is still withholding the excess sum of RM17,134.04 which formed the basis of the defendant's counterclaim.

THE DEFENDANT'S CASE

[7] The defendant submitted that the plaintiff herself has admitted in evidence that she did receive the 50 Litecoins in her Binance wallet which amounts to the repayment of the loan as the cryptocurrency is a digital asset and is universally accepted as a form of money and bears valuable consideration.

[8] This position is confirmed by the plaintiff's during the cross-examination that the Litecoins did in fact possess the value of 412.96 each. In view that the value of the Litecoins had been admitted, it is clear that the learned magistrate had in fact failed to appreciate the value of the Litecoins paid by the defendant to the plaintiff which in fact exceeds the said sum by RM17,134.04. The excess sum thereafter serves as the basis for the defendant's counterclaim which was wrongly dismissed by the learned magistrate.

[9] The plaintiff also had admitted that the defendant did teach her on how to sell her 50 Litecoins should she choose to do so. If at all the 50 Litecoins were not made as the repayment of friendly loan and the values of the coins are insufficient to return the friendly loan sum, the plaintiff ought not to have received the 50 Litecoins and would have naturally and instantly rejected the transfer of the digital asset to her Binance wallet.

[10] The defendant submitted that from the plaintiff's action is that she had received the repayment of the friendly loan sum by way of the 50 units Litecoins and that she knew that it bears valuable consideration which is sufficient to repay the friendly loan amount. The plaintiff even requested the appellant to teach her how to sell/ trade the Litecoins from her Binance wallet.

[11] In totality, the defendant submitted that the learned magistrate had erred in law and/or in fact by failing to appreciate and consider the following arguments:

(a) the plaintiff had full knowledge of the payment of Litecoins into her Binance account;

(b) the plaintiff had full knowledge of the value of the Litecoins in her Binance account; and

(c) the plaintiff had admitted that the defendant had taught her how to sell the Litecoins in her Binance account.

THE PLAINTIFF'S CASE

[12] It is undisputed facts that the plaintiff had paid a sum of RM70,000 for the purchase of the machines to the defendant and that both parties had agreed for the said sum to be converted to a friendly loan for the defendant. As the defendant had failed to repay the loan and failed to respond to the plaintiff's notice of demand, the plaintiff filed a civil suit against the defendant to recover the said sum.

[13] Mining report that was relied by the defendant during the trial and the defendant allegations that the repayment of the loan was done by transferring 50 unit of Litecoins to the plaintiff's Binance account is bare assertion and unsupported. This was purely done by the defendant to escape his contractual obligation to repay the friendly loan amounting to RM70,000.

[14] The defendant had never denied the fact that he owed RM70,000 to the plaintiff. On 18 May 2019, when the plaintiff asked the defendant for the repayment of the loan, the defendant went on to explained that the defendant himself suffered loss on the mining investment instead of denying that the defendant owed some money to the plaintiff.

[15] The defendant's counterclaim for RM17,134.56 is also baseless and was not proven. The defendant claimed that the plaintiff is still withholding the excess sum of RM17,134.04 based on the following calculation:

*1 unit Litecoin = USD412.96

*USD412.96 x 50 unit Litecoin = USD20,648 x RM4.22 (*nilai tukaran matawang* USD-MYR) = RM87,134.56

*RM87,134.56 – RM70,000 = RM17,134.56

[16] The above calculation is based on the defendant's assumption that the plaintiff's had successfully sold the Litecoin at the highest value of 1 unit of Litecoin = USD412.96.

ANALYSIS AND FINDING

[17] I am guided by the principle in the case of *Pernec Corp Bhd v A & AT Advanced Power Systems Sdn Bhd* [2013] 4 MLJ 719 (pp 156 of ABA) where the Court of Appeal observed the following:

> [9] Appellate interference is warranted when it has been shown that a decision was arrived at by a trial court without judicial appreciation of the evidence. We agree with counsel for the appellant that the learned judicial commissioner has not properly analysed the entirety of the evidence which was given before her. For the reasons stated we allowed the appeal and set aside the decision of the High Court with costs of RM25,000 here and below. Deposit was ordered to be refunded.

[18] In his judgment, the learned magistrate came to a finding that the 50 Litecoins was of no value and cannot serve as the repayment of the loan and as to date the loan has yet to be settled.

[19] With utmost respect, the learned magistrate has erred in facts and law when he failed to consider that the defendant had paid the friendly loan of RM70,000 through 50 Litecoins to the plaintiff's Binance account. This has indicated that 50 Litecoins being the repayment of the loan was accepted without any objections by the plaintiff.

[20] I also find that the learned magistrate had erred in law and in fact when he considered that the 50 Litecoins was of no value. There is no evidence advance by the plaintiff that the 50 Litecoins did not possess a market value. The magistrate failed to take cognizance that cryptocurrency is a digital asset and is universally accepted as a form of money and therefore it bears valuable consideration. In *Robert Ong Thien Cheng v Luno Pte Ltd & Anor* [2019] 1

LNS 2194, the court states that:

> [14] However, the respondents, on the other hand, rightly contended that while cryptocurrency is not 'money' (ie legal tender) as we know in the traditional sense, it has been recently defined as a form of 'security' by s 3 of the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019.
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> ...

[21] The respondents were also correct that it cannot be disputed that it is a form of 'commodity' as real money is used to purchase the cryptocurrency. In this regard, there is indeed value attached to the Bitcoin in the same way as value is attached to 'shares'.

[22] In another case *Lee Kuang Gen v Tan Sri Dato' Seri Dr M Mahadevan a/l Mahalingam and other appeals* [2024] 1 MLJ 825 the court states that:

> [79] With regards to issue (i), it is common ground that 'Money' is not defined in the MLA. Therefore, 'money' must be given its dictionary meaning. In *Black's Law Dictionary*, 7th Ed (1999), money is defined as: 'Medium of exchange authorised or adopted by a government as part of its currency ... assets that can be easily converted to cash ...
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> [80] In view of the above definition of money, that is, it is a medium of exchange that can be easily converted to cash, we find that the definition of money is wide enough to encompass not only traditional forms of currency but also assets that can be readily converted into cash. This will definitely include gold and cryptocurrencies.

[23] The learned magistrate also failed to consider that the plaintiff's admission that she had no knowledge to manage her account and requested the defendant to teach her how to sell the Litecoins. Here the plaintiff has accepted the Litecoins for the full repayment of the loan but due to her inability and lack of knowledge to sell the Litecoins, such repayment of the loan by the defendant could not be materialised.

[24] Thus, I find that the 50 Litecoins transferred by the defendant to the plaintiff is the full repayment of the friendly loan for the value RM70,000. For this reasons the defendant is not entitled the counter claim of RM17,134.04 as prayed. Therefore, I made the following order:

(a) the defendant's appeal against the magistrate's order dated 26 July 2022 is allowed;

(b) the defendant's counterclaim in the magistrate court is dismissed; and

(c) cost of RM8,000 for the defendant to be paid by the plaintiff.

Appeal allowed.

Reported by Nabilah Syahida Abdullah Salleh